

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

JASON ICKES, voter, KEN BEYER, voter,
MACOMB COUNTY REPUBLICAN PARTY, by
its officers of the Executive Committee,
DONNA BRANDENBERG, US Tax Payers
candidate for the 2022 Governor of Michigan,
ELECTION INTEGRITY FUND AND FORCE,
a Michigan non-profit corporation, and
SHARON OLSON, in her official capacity as
the Clerk of Irving Township Barry County,

No. 22-cv-00817

HON. PAUL L. MALONEY

MAG. PHILLIP J. GREEN

Plaintiffs,

**DEFENDANTS' MOTION TO
DISMISS**

v

GRETCHEN WHITMER, in her official
capacity as the Governor of Michigan, and
JOCELYN BENSON, in her official capacity as
Michigan Secretary of State and MICHIGAN
BOARD OF STATE CANVASSERS,

Defendants.

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DEFENDANTS' MOTION TO DISMISS

Defendants Governor Gretchen Whitmer and Secretary of State Jocelyn Benson, and the Michigan Board of State Canvassers (the Defendants) move for dismissal of Plaintiffs' Amendment Complaint pursuant to Fed. R. Civ. Proc. 12(b)(4) and (6), for the following reasons:

1. Plaintiffs' amended complaint challenges the legality of the November 3, 2020 election and the subsequent tabulation of votes.
2. Plaintiffs' claims are barred by the doctrine of laches because Plaintiffs delayed unreasonably in raising their claims before this Court and the State Defendants were prejudiced by this delay.
3. Plaintiffs lack legal standing to raise their claims before this Court.
4. Some or all of Plaintiffs' claims are barred by the Eleventh Amendment.
5. Plaintiffs' federal constitutional claims should be dismissed because Plaintiffs fail to state a claim upon which relief may be granted.
6. Plaintiffs are not capable of initiating federal criminal proceedings based upon 50 U.S.C. §70201 and 70202.
7. Plaintiffs' state law claims should be dismissed because Plaintiffs fail to state a claim for which relief may be granted.

For these reasons and the reasons stated more fully in the accompanying brief in support, Defendants Governor Gretchen Whitmer, Secretary of State Jocelyn Benson, and the Michigan Board of State Canvassers respectfully request that this Honorable Court enter an order dismissing Plaintiff's complaint against

her in its entirety and with prejudice, pursuant to Fed. R. Civ. Proc. 12(b)(4) and (6).

Respectfully submitted,

s/Erik A. Grill

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Dated: October 4, 2022

CERTIFICATE OF SERVICE

I hereby certify that on October 4, 2022, I electronically filed the above document(s) with the Clerk of the Court using the ECF System, which will provide electronic copies to counsel of record.

s/Erik A. Grill

Erik A. Grill